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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,878	03/06/2002	Michael R. Schramm		2526

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Perry, UT 84302

EXAMINER

LAMB, BRENDA A

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/092,878

Applicant(s)

SCHRAMM, MICHAEL R.

Examiner

Brenda A. Lamb

Art Unit

1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2006 and 26 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 46 is/are allowed.
- 6) ☒ Claim(s) 21-45 and 47-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 22-24, 34-39, 40-45 and 47-51 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The examiner maintains that the originally filed specification fails to teach or suggest that the container is comprised of a non-annular funnel connected to an

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opening in a wall of the container and wherein the funnel axis is defined as running substantially from the center of the opening in the wall to substantially the center of an opening in the funnel located within the container, and wherein a cross-sectional shape of the funnel in a position substantially normal to the funnel axis defines a cross-sectional shape having a first breadth dimension and a second breadth dimension and wherein the first breadth dimension is greater than the second breadth dimension.

The term "non-annular" term is so broad that it reads on a variety of configurations other than one having an annular or circular cross-section and these configurations would include those that are not disclosed by the originally filed specification such as funnel having a square-shaped cross-section. Further, it is noted with respect to applicant argument's that his drawings clearly show that his funnel forms the shape of extruded ellipse and therefore supports claim language that a first breadth dimension is greater than the second breadth dimension. The recitation that a first breadth dimension is greater than the second breadth dimension does not limit the shape of the funnel to an ellipse since the first breadth dimension and the second breadth dimension as claimed are not required to pass through the funnel axis and can in fact read on a figure with a circular cross-section since a cord which defines a given breadth dimension that does not pass through the funnel axis can have different lengths.

The originally filed specification fails to teach or suggest a non-edible utensil as set forth in claims 22, 34 and 48-49. For example, applicant has claimed the non-edible utensil is selected from a group set forth in claims 22,34 and 48 and includes a spoon

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and a straw and utensils such a spoon or spooning device and straw may be entirely edible as taught by Price 3,840,678 (see Figures 3-4) and Fowler at column 1 line 55.

If applicant disagrees then he needs to point out support in the specification and/or the drawings for a utensil which is non-edible.

The originally filed specification fails to teach or suggest a device for dipping eggs having a handle portion and an egg retention portion.

If applicant disagrees then he needs to point out support in the specification and/or the drawings for at least one utensil having a handle portion and an egg retention portion. Note Ashton 4,438,564 is cited for the sole purpose of showing a device for dipping eggs can have a handle portion and an egg retention portion yet have structure unlike that of a wire egg dipper which is argued by applicant as being constructed from formed wire and having an elongated handle portion and an open loop portion.

The originally filed specification fails to teach or suggest at least one utensil having a handle portion and an open loop portion.

If applicant disagrees then he needs to point out support in the specification and/or the drawings for at least one utensil having a handle portion and an open loop portion.

The originally filed specification fails to teach or suggest at least one utensil having a handle portion and non-handle portion.

If applicant disagrees then he needs to point out support in the specification and/or the drawings for a utensil having a handle portion and non-handle portion.

The originally filed specification fails to teach or suggest that the edible article and the non-edible utensil define two unconnected objects. Note the originally filed specification fails to teach the negative limitation that the edible article and utensil are "unconnected" objects. If applicant disagrees then he needs to point out support in the specification and/or the drawings.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22-27,34-39,41 and 49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "discreet" in claim 49 is confusing since it is unclear how it further limits the claimed objects since the term "discreet" as defined by the Random House Unabridged Dictionary is "modestly unobstructive; unostentatious". The term "non -handle potion" set forth in claims 22, 34 and 41 is confusing since it is unclear what a "potion" encompasses.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-22, 24-28,30-34,36-45 and 47-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over under the combination of Law in view of Schramm 5,246,046, Great Britain 1,428,356 (Hunter), Martindale, Price 3,840,678 and Japan 11-227388.

Schramm '046 teaches a kit comprising a container designed to prevent spilling of flowable material contained therein, the container having an inner cavity and an opening in a wall of the container, the opening having a funnel connected to the opening to provide communication between the inner cavity and an exterior of the container, at least one utensil at least partially removably contained within the container, the utensil having a substantially elongated handle portion and an open loop portion, and liquid matter removably contained within the container.

Hunter teaches a kit comprising the combination of a container designed to prevent spilling of flowable material with a flowable material therein, wherein the flowable material can comprise a liquid, paint, or a granular material. Hunter teaches the container having an inner cavity and an opening in a wall of the container, the opening having a funnel connected to the opening to provide communication between the inner cavity and an exterior of the container. Hunter teaches a discrete amount or upper fixed amount of liquid is contained in the container in order to prevent spillage therefrom.

Japan '388 teaches a kit comprising the combination of a container and a colorant, coloring liquid, contained within the container and a utensil, brush 8, being colored with the colored liquid wherein the container having an inner cavity, and exterior, an opening in a wall of the container and a funnel connected to the opening to provide communication between the inner cavity and the exterior of the container. Note Japan '388 also teaches the invention may include the combination of a drinkable liquid and a straw.

Martindale teaches the design of a kit comprising the combination of a container and flowable material, a granular or powdered dye/colorant, contained within the container wherein said container includes an inner cavity, an exterior, an opening in a wall of the container and a funnel connected to the opening to provide communication between said inner cavity and the exterior of said container. Martindale teaches a discrete amount or upper fixed amount of powder is contained in the container in order to prevent spillage therefrom.

Price teaches a kit comprising a container having an inner cavity and an opening in a wall of the container, the opening having a funnel connected to the opening to provide communication between the inner cavity and exterior of the container and an edible article, bread stick 26, and a non-edible utensil or spoon 32 removably contained within the container. Price teaches every element of the kit set forth in claim 49. With respect to claims 34 and 39, the Price non-edible utensil or spoon as shown in Figure 7 is at least partially removable from the container. Further, Price teaches the container resists spillage of discrete amount or fixed amount of the non-gaseous fluid contents or

the edible matter or fluid food within the container when the container is oriented in any orientation.

Law teaches egg dyeing using a kit egg dyeing kit which uses the combination of a colorable non-utensil workpiece, an egg, at least one non-edible utensil (egg ladle and a brush), a colorant and a container. Law also teaches the mess associated with the egg dyeing process which occurs as a result of the spillage of the flowable materials contained within the container.

As evidenced by Schramm, Hunter, Japan '388, Price and Martindale, it is known to provide containers with a funnel that are connected to the opening of the container so as to provide communication between the inner cavity and the exterior of the container in order to prevent spillage of flowable non-gaseous material (solids or liquids). Therefore, it would have been obvious to one of ordinary skill in the art to substitute the container in an egg dyeing kit such as disclosed by Law with another container having a funnel that are connected to the opening of the container so as to provide communication between the inner cavity and the exterior of the container such as taught from the combined teaching of Schramm, Hunter, Japan '388, Price and Martindale since the combined teaching of Schramm, Hunter, Japan '388, Price and Martindale as discussed above teaches that such container prevent spillage of flowable non-gaseous material therefrom and especially in view of the disclosure of Law of the problems of associated with the spillage of the flowable material from the container of the egg dyeing process. Thus, claims 21-22, 28, 27, 33, 34, 39, 40, 45 and 49 are obvious over the above cited combination of references. Further, absent the new matter, claims 47-

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48 are obvious over the above cited combination. In any event, if applicant points out support for the non-annular opening, it would have been an obvious matter of design choice to provide the opening of the container in the Law egg dyeing kit as modified with a shape with the scope of the claims 47-48 dependent on end use requirement of the kit (see *In re Dailey*, 149 USPQ 47). With respect to claim 41, the Law egg dyeing kit modified as discussed above would have contained an wire egg dipper within the scope in order remove the egg dyed in its modified kit. With respect to claims 50-51, Law shows the utensils in the kit include an egg ladle or wire egg dipper. Law teaches an egg ladle or wire egg dipper includes a substantially elongated handle portion and open loop portion. Law teaches the kit in use contains a egg which reads on a non-liquid edible matter. With respect to claim 25, 31, 37 and 43, Schramm, Japan '388 and Martindale each teach constructing the container from a plastic material. The method of forming the container from plastic in the form of a sheet is not germane to issue of the patentability of the device/container itself. Therefore, this limitation has not been given patentable weight. With respect to claims 24, 30, 36 and 42, Schramm, Japan '388 and Martindale each show in their Figures that the container is comprised of a first and second member. Schramm, Japan '388 and Martindale each show the container having a first member which is detachably engagable to the second member which is obviously at least partially sealingly engageable with the second member in order to prevent leakage of the contents from the container. With respect to claims 26, 32, 38 and 44, absent how the flow channel relates to other structural elements of the container especially, the funnel of the container, the wall of the container below the funnel and

including the funnel of the Schramm, Hunter, Japan '388 and Martindale container can serve as a flow channel.

Claims 23, 29 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over under Law in view of Schramm 5,246,046, Great Britain 1,428,356 (Hunter), Price 3,840,678, Martindale and Japan 11-227388 in further in view of Lintvedt.

Law, Schramm, Hunter, Price, Japan '388 and Martindale are applied for the reasons noted above but fails to teach the container is a transparent container. However, it would have been obvious to modify the Martindale container to construct it from a material that is transparent but obvious to do so for the advantages taught by Lintvedt of using a transparent container - enables the user to discern characteristics of the contents within the transparent container such as color.

In response to applicant's argument that providing the funnel with a non-annular shape is counterintuitive the following rejection is set forth below:

Claims 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over under the combination of Law in view of Schramm 5,246,046, Great Britain 1,428,356 (Hunter), Price 3,840,678, Martindale and Japan 11-227388 and if necessary, McShane 4,967,687.

Law, Schramm, Hunter, Price, Japan '388 and Martindale are applied for the reasons noted above but each fail to teach the funnel is non-annular. However, as discussed above, it would have been an obvious matter of design choice to provide the opening of the container in the Law egg dyeing kit as modified with a shape with the scope of the claims 47-48 dependent on end use requirement of the kit (see In re

Dailey, 149 USPQ 47) and, if necessary, McShane teaches as shown in Figure 1 providing the through opening of a device for dyeing eggs with a non-annular opening which reads on shape as set forth in claim 48 for the obvious advantage of facilitating the insertion of the egg into the container.

Claims 34, 36, 38-39 and 47-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Price 3,840,678.

Price teaches a kit comprising a container having an inner cavity and an opening in a wall of the container, the opening having a funnel connected to the opening to provide communication between the inner cavity and exterior of the container and an edible article or edible commodity/object, discrete or distinct amount of fluid therein, and a non-edible utensil or spoon 32 removably contained within the container wherein the article and non-edible utensil are unconnected as shown in Figure 2 such that the recited utensil can manipulate the article. Price teaches every element of the kit set forth in claim 49. With respect to claims 47-48, Price teaches a kit comprising the following combination of elements: a container; edible matter 20; and a non-edible utensil 32. As discussed above, the Price container having an inner cavity and an opening in a wall of the container, the opening having a funnel connected to the opening to provide communication between the inner cavity and exterior of the container. Thus, absent the new matter, Price teaches every element of the claimed kit.

With respect to claims 34 and 39, the Price non-edible utensil or spoon as shown in Figure 7 is at least partially removable from the container. Further, Price teaches the container resists spillage of non-gaseous fluid contents of the container when the

container is oriented in any orientation. With respect to claim 38, absent how the flow channel relates to other structural elements of the container, the cylindrical wall of the Price base 12 can serve as a flow channel. With respect to claim 36, Price shows the container as shown in Figure 2 comprised of a first member and second member wherein the first member is sealingly and detachable from the second member.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over under Price 3,840,678 in view of Lintvedt.

Price is applied for the reasons noted above but fails to teach the container is a transparent container. However, it would have been obvious to modify the Martindale container to construct it from a material that is transparent but obvious to do so for the advantages taught by Lintvedt of using a transparent container - enables the user to discern characteristics of the contents within the transparent container.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over under Price 3,840,678 in view of Schramm 5,246,046.

Price is applied for the reasons noted above but fails to teach the container is a formed plastic sheet. However, it would have been obvious to use as the material of construction of the Price container a formed plastic sheet since Schramm teaches the use of plastic as a material for construction of a container which contains edible matter. The method of forming the container from plastic in the form of a sheet is not germane to issue of the patentability of the device/container itself. Therefore, this limitation has not been given patentable weight.

Claims 40-42 and 44-45 are rejected under 35 U.S.C. 102(b) as being anticipated by McCombs 1,254,714.

McCombs teaches a kit comprising a container and a paint which reads on a colorant as defined by The American Heritage Dictionary of English Language, Second Ed. 1982, "something, especially dye, pigment, ink or paint, that modifies the color of something else", the paint being a discrete article or commodity of colorant arranged in the container such that the level/height of paint therein is such that it reaches only at the bottom end of the neck of the funnel. McCombs teaches the container has an inner cavity and an opening in a wall of the container and a funnel connected to the opening to provide communication between the inner cavity and the exterior of the container. McCombs teaches every element of the kit set forth in claims 40-41. With respect to claim 45, McCombs container resists the spillage of non-gaseous fluid contents of said container when said container is oriented in any orientation (page 1 lines 101-110). With respect to claim 44, absent how the flow channel relates to other structural elements of the container, the cylindrical wall of the McComb base/body 1 can serve as a flow channel. With respect to claim 42, McComb container is comprised a first member and a second member and wherein the first member is sealingly and detachably engageable to the second member as shown in Figure 4.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over under McCombs 1,254,714 in view of Schramm 5,246,046.

McCombs is applied for the reasons noted above but fails to teach the container is a formed plastic sheet. However, it would have been obvious to use as the material of

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contruction of the McCombs container a formed plastic sheet since Schramm teaches the use of plastic as a material for construction of a container which contains edible matter. The method of forming the container from plastic in the form of a sheet is not germane to issue of the patentability of the device/container itself. Therefore, this limitation has not been given patentable weight.

Claims 40 and 43-45 are rejected under 35 U.S.C. 102(e) as being anticipated by Martindale.

Martindale teaches the design of a kit comprising the combination of a container and colorant contained within the container wherein said container includes an inner cavity, an exterior, an opening in a wall of the container and a funnel connected to the opening to provide communication between said inner cavity and the exterior of said container, and wherein the colorant defines a discrete/distinct article or commodity, a predetermined quantity of colorant powder arranged in the container. Martindale teaches every element of the claimed kit as set forth in claim 40. With respect to claim 45, Martindale teaches the container resists the spillage of non-gaseous fluid contents of the container when the container is oriented in any orientation. With respect to claim 43, Martindale teaches the container is made from a plastic material. The method of forming the container from plastic in the form of a sheet is not germane to issue of the patentability of the device itself. Therefore, this limitation has not been given patentable weight. With respect to claim 44, absent how the flow channel relates to other structural elements of the container, the cylindrical wall of the Martindale side wall form a flow channel.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over under Martindale.

Martindale is applied for the reasons noted above. Martindale shows in his Figures that the container is comprised of a first and second member. Martindale first member is detachably engagable to the second member and further is obviously at least partially sealingly engageable with the second member in order to prevent leakage of the contents from the container.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over under Martindale in view of Lintvedt.

Martindale is applied for the reasons noted above. Martindale fails to teach the container is a transparent container. However, it would have been obvious to modify the Martindale container to construct it from a material that is transparent but obvious to do so for the advantages taught by Lintvedt of using a transparent container - enables the user to discern characteristics of the contents within the transparent container such as color.

Claims 52-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Price 3,840,678 in view of Meth 3,464,599.

Price is applied for the reasons noted above. Price as discussed above teaches a kit or apparatus comprised of a spill proof or non-spill container having an inner cavity, a utensil 32, and at least one colorable work piece (bread stick) as depicted in Figure 7, the container having an opening in a wall of the container and a funnel connected to said opening to provide communication between the inner cavity and an exterior of the

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container, and wherein the opening is adapted to permit a work piece to pass through the opening, and wherein the at least one colorable work piece is removably contained within the container, and wherein the utensil is removably positioned within the opening of said container for accessing contents of the container through the opening. Price fails to teach the container is comprised of a well formed in the inner cavity and such well being adapted to receive the work piece.

Meth teaches a container comprised an inner cavity, an exterior, an opening in a wall of the container to provide communication between the inner cavity and the exterior of the container and a funnel connected to the opening, wherein the container resists the spillage of liquid contents of the container when the container is oriented in any orientation, wherein the opening is adapted to permit an article to pass through the opening, and wherein the inner cavity includes a well formed in the cavity, the well being adapted to receive a portion of the at least one article as shown in Figure 13. Meth fails to teach the container removably contains an edible article.

However, it would have been obvious to modify the Price apparatus by substituting its non-spill liquid container with another non-spill liquid container such as taught by Meth for the obvious reason to expect similar end results that is providing a quick food service item in a non-spill liquid container. Thus claims 52-54 are obvious over the above cited references.

It is noted that applicant has declared the previously filed terminal disclaimers as being void and has submitted a substitute terminal disclaimer. However, it is noted that applicant has failed to file the required petition under 37 CFR 1.182 to request withdrawal of the recorded terminal disclaimers and therefore the earlier filed and recorded terminal disclaimers remain in effect in the file. (see MPEP 1490 Part VII). Further, the terminal disclaimer filed 8/12/2006 is not proper since it refers to an incorrect serial number for applicant's copending application (US Patent Application No. 09/797,156) not US Patent Application No. 09/707,156. It is noted that in circumstances where a terminal disclaimer is filed to obviate an obviousness type double patenting rejection and identifies the wrong target application then a replacement terminal disclaimer identifying the correct target application would be required by the examiner (See MPEP 1490 Part V). Further it noted that in the terminal disclaimer filed 8/12/2006 applicant has lined through text of the terminal disclaimer and such lining through text of the terminal disclaimer may render the terminal disclaimer improper.

Applicant's arguments filed 8/12/2006 and 6/26/2006 have been fully considered but they are not persuasive.

In regard to applicant's argument that although utensils may on occasion be comprised of edible matter such as those recited by the examiner, applicant's utensils should be accorded the plain and ordinary meaning is found to be non-persuasive. The examiner maintains the rejection that the recitation that the utensil is "non-edible" presents new matter in that the term "non-edible" as applied to the utensil is not supported by the originally filed specification. Note the examiner shows with the cited

prior art (Price 3,840,678 (see Figures 3-4) and Fowler at column 1 line 55) that utensils such as spoons and straws may be accorded under plain and ordinary meaning as also being one that is edible.

It is noted that applicant agrees that the term "non-annular" as applied to indicate the configuration or shape of the funnel may read on a variety of configurations not disclosed by applicant such as a square-shaped cross-section rather applicant claims that the drawings set forth in the instant application support the term "non-annular" as applied to indicate the configuration or shape of the funnel. The examiner maintains that applicant's originally filed specification fails to provide support for the term "non-annular" as applied to indicate the configuration or shape of the funnel.

In regard to applicant's argument that the design of a wire egg dipper is well known and conventional and a detailed description of the wire egg dipper is not necessary since wire egg dipper or a device for use in dipping eggs conventionally have a handle portion and open loop portion is found to be confusing since if the design of the wire egg dipper conventionally has a handle portion and open loop portion then it is unclear why applicant has chosen to alternatively claim the utensil as a wire egg dipper or a device for use in dipping eggs having a handle portion and open loop portion given applicant's argument that they are one and the same.

Applicant's argument that Law fails to provide for an egg container that prevents spillage problem in egg container is found to be non-persuasive. First of all, it is noted that only dependent claims 27,33,39 and 45 and independent claim 46 positively claim that the container resists spillage of non-gaseous fluid contents of the container when

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the container is oriented in any orientation while the vast majority of the claims do not. Law is not applied to teach a spill-proof container. Law teaches an egg dyeing kit is comprised of the following elements: a colorable non-utensil workpiece (an egg), at least one non-edible utensil (egg ladle and a brush), a colorant and a container. Law also teaches the mess associated with the egg dyeing process which occurs as a result of the spillage of the flowable materials contained within the container. Therefore, it would have been obvious to one of ordinary skill in the art to substitute the container in an egg dyeing kit such as disclosed by Law with another container having a funnel that are connected to the opening of the container so as to provide communication between the inner cavity and the exterior of the container such as taught from the combined teaching of Schramm, Hunter, Japan '388, Price and Martindale since the combined teaching of Schramm, Hunter, Japan '388, Price and Martindale as discussed above teaches that such container prevent spillage of flowable non-gaseous material therefrom and especially in view of the disclosure of Law of the problems of associated with the spillage of the flowable material from the container of the egg dyeing process.

Claim 46 is allowed.

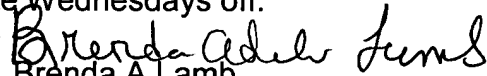
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Brenda A. Lamb at telephone number (571) 272-1231. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday with alternate Wednesdays off.


Brenda A Lamb
Examiner
Art Unit 1734